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**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Criminal Appeal No.232/2002**

**Appellant**

1. Jugadhar, aged about 36 years, s/o Kem Singh
2. Tirro @ Tirna, aged about 30 years, s/o Wakkar Singh,

Both residents of village Badrenga, P.S. Mardoom, Distt. Bastar (C.G)

***Versus***

**RESPONDENTS**

State of Chhattisgarh, through P.S. Mardoom, Bastar (C.G)

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**Appearance:**

Shri G.S. Agrawal, Sr. Advocate, with Shri Sudeep Verma, counsel for the Appellants.

Shri Satish Gupta, Deputy Govt. Advocate, for the State.

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**DB: Hon'ble Shri Justice L.C. Bhadoo,**

**Hon'ble Shri Justice Sunil Kumar Sinha, JJ**

**ORAL JUDGMENT**
**(27.9.2007)**

The following judgment was delivered by

**L.C. Bhadoo, J,**

**(1)** The accused appellants Jugadhar and Tirro @ Tirna have preferred this appeal u/s 374(2) of the Code of Criminal Procedure questioning the legality, correctness of the judgment of conviction and order sentence dated 29.12.2001 passed by the First Addl. Sessions Judge, Jagdalpur, in Sessions Trial No.5/2001 whereby the learned Addl. Sessions Judge, after holding the accused appellant Jugadhar (who died during the pendency of the appeal), guilty for the offence u/ss 302 & 325 of the I.P.C. sentenced him to undergo imprisonment for life and to pay a fine of Rs.500/-, in default of payment of fine, to

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further undergo six months R.I; to undergo 4 years R.I. and to pay a fine of Rs.300/-, in default, to further undergo 3 months R.I. respectively. The accused Tirro @ Tirna has been convicted for the offence u/s 302 read with section 34 IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.500/-, in default of payment of fine to further undergo 6 months R.I. and for assaulting Sukman, Tirro has also been convicted u/s 323 and sentenced to undergo 3 months R.I., to pay a fine of Rs.200/-, and in default thereof, to further undergo R.I. for 3 months. The accused Balsingh, Jainath have also been convicted u/s 323 ~~and~~ but they have not preferred any appeal. However, these accused persons have been acquitted from the remaining charges. The accused Chander and Renuram have also been acquitted of the charges under section 147, 148, 307 read with section 149 of the I.P.C. During the pendency of this appeal, accused Jugadhar had expired, therefore, the appeal of accused Jugadhar stands abated and an order to that effect has been passed on 10.1.2006. Therefore, now the appeal of accused Tirro @ Tirna remains to be decided.

**(2)** The case of the prosecution in brief is that Sukman Mahra lodged a report in the Police Station Mardum on 11.10.2000 at about 15.10 p.m. to the effect that he is resident of village Badrenga and a dispute with regard to the land is pending in the civil Court with Chander Singh Dhakad and others. This year, in the first instance Chander Singh sowed paddy crop in the land, thereafter, his son Somaru sowed the paddy crop because the land is in the name of his son. However, Tirro, Chander, Jayo, Bal Singh, Renu, Jugadhar and ladies went to reap the standing paddy crop. When his younger brother Sukdev and another brother Suklal went on the spot to ask the accused persons not to reap the Paddy crop, on which, the accused persons with a common object to commit the murder of Sukdev, accused Jugadhar attacked with a Rapa on the head of Sukdev, as a result of which, Sukdev fell down. Accused Tirro attacked with the Club. All these persons attacked Sukdev. When Baldeo and Budhram went there to intervene, the accused persons attacked them also. Sukdev was

attacked by Jugdev with Rapa on his head which was seen by him and Tirro attacked with a club. Receiving this report, an offence u/ss 147, 148, 149, 302, 307 & 323 was registered under Ex.P.1. The investigating officer left for the scene of occurrence and prepared inquest Ex.P.2 on the body of Sukhdev. After giving notice Ex.P.3, during the police custody Jugadhar gave memorandum Ex.P.4 and in pursuance of that, Rapa i.e., Spade was seized under Ex.P.5. One Axe was seized from accused Renu under Ex.P.6. The clothes of the deceased Sukhdev were seized under Ex.P.7. Halka Patwari prepared the site plan of the place of occurrence Ex.P.10. The injuries of Baldeo, Sukman, Suklal, Jagturam, Gudram, were examined by the Doctor and the injury reports were prepared under Ex.P-12 to P-16. The body of Sukhdev was sent for postmortem examination to Primary Health Center, Lohandigunda under Ex.P.27 where Dr.Virendra Thakur (P.W.11) conducted Postmortem. According to him, the death was on account of skull injury, hemorrhage & Coma. The mode of death was homicidal in nature. After completion of investigation, charge sheet was filed in the court of Judicial Magistrate, First Class, Jagdalpur, who in turn committed the case to the Sessions Judge, Jagdalpur, from where the learned First Addl. Sessions Judge received the case on transfer for trial.

**(3)** The prosecution in order to establish the charges against the accused persons examined 16 witnesses. The statement of the accused persons was recorded u/s 313, in which they denied the material appearing against them, stated that they are innocent persons and they have been falsely implicated in the crime. They were reaping paddy crop standing in their field. The complainant party attacked them with club, axe and inflicted injuries. They examined two witnesses D.W.1 Sonmati and D.W.2 Shankar Singh in their defence.

**(4)** The learned Addl. Sessions Judge, after hearing the counsel for the respective parties convicted and sentenced the appellants alongwith other accused persons as aforesaid and acquitted two accused persons namely Renuram and Chander.

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**(5)** We have heard Shri G.S. Agrawal, Sr. Advocate with Shri Sudeep Verma, appearing for the appellants and Shri Satish Gupta, Dy. Govt. Advocate appearing for the State.

**(6)** Mr. Agrawal has not disputed the homicidal death of Sukhdev. However, he argued the land in question where the incident took place was in possession of the accused party. In fact, they sowed the paddy crop and when they went to reap the paddy crop, the complainant party attacked the accused party in which the accused persons received grievous injuries. Even the present accused Tirro sustained injuries in which his hand was fractured, a case was registered and charge sheet was filed against the complainant party. He further argued that the learned trial Court has arrived at a conclusion that the prosecution has failed to establish the fact of formation of an unlawful assembly and that is why all the accused persons have been acquitted of the charges u/s 147, 148 and for other offence with the aid of section 149. He also submitted that the learned trial Court has reached to the conclusion that there was a free fight and as per the evidence of the prosecution, the fatal blow to the deceased Sukhdeo was inflicted by appellant Jugadhar (since deceased) and that is why, he has been convicted and sentenced u/s 302 I.P.C. The present accused appellant has been convicted with the aid of section 34 of the I.P.C. and the allegations against this appellant is that he attacked the deceased with the club on his shoulder, as a result of which, he sustained simple injuries of bruise. Therefore, at the most, on the part of individual act, the offence against the appellant does not extend beyond section 323 of I.P.C., because neither there is a finding nor there is evidence on record that the accused appellant Tirro was sharing the common intention with the accused Jugadhar to commit the murder of Sukhdev.

**(7)** On the other hand, Mr.Gupta, learned State Counsel supported the judgment of the trial Court.

**(8)** Having heard learned counsel for the parties, we have perused the judgment of the trial Court as also the record and the evidence available on record.

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**(9)** It is an admitted position that there was a dispute between the complainant party and accused party regarding the land bearing Survey no.631, area 0.18 hectares situated in village Banrenga. A perusal of the Paragraphs 37 & 42 of the judgment of the trial Court as also the documents Ex.D-3, the order of the settlement officer Ex.D-4 dated 24.7.2000 Ex.D-5 and the statement of P.W.16 namely Pradeep Pandey, Halka Patwari in which the Patwari has stated that the land bearing Kh.No.631 area 0.18 hectares was not divided into two parts, the said land as per the revenue record was in the name of Sukman, s/o Chhakkar Dhakad, but he does not know that in whose possession the said land was. As per the *Rin Pustika* Ex.D-3, the land was in the name of Sukhman Dhakkad, Laxmi Bai and Chandan and even the Order Ex.D-4 passed by the Settlement officer on 24.7.2000 shows that the land was in the name of accused party, which has been held by the trial Court also. It appears from the record that both the parties were claiming possession of their land and as per the prosecution case, even in the first instance the accused party sowed the Paddi crop on the land thereafter, the complainant party sowed the paddy crop on the same land and when the paddy crop was ready to reap, the accused party went there to reap the crop, at the same time the complainant party also reached there to prevent the accused party from reaping the crop on which the quarrel started on the spot and both the parties sustained the injuries, therefore, the cross cases were filed registered and that is why the learned trial Court observed in Para 48 of the judgment that the prosecution has failed to establish the charge of formation of an unlawful assembly by the accused persons as some persons were labourers also and ultimately the trial Court held that each accused is responsible for the assault made by him. However, in the later part of the said para without substantial evidence on record the learned judge has held that the accused Tirro @ Tirna was sharing the common intention with Jugadhar who in fact made the fatal assault on the head of Sukhdeo, therefore, he has been held guilty under section 302 read with section 34. When the learned Addl. Sessions judge reached to the conclusion that the prosecution has failed to

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establish that the accused persons were forming unlawful assembly with the common object except that Jugadhar attacked with spade on the head of Sukhdev and present accused appellant Tirro attacked with the club on the shoulder of Sukhdev after he fell down, there is no evidence on record to establish that the accused Tirro was sharing the intention with Jugadhar to cause the death of Sukhdev. Had it been so, when first fatal blow was inflicted by the accused Jugadhar and Sukhdev fell down, this accused appellant also ought to have inflicted the blow on the head or vital part of the body with the said club, instead thereof the allegation against the appellant is that he attacked with the club on the shoulder and as a result of which, Sukhdev sustained simple injury of bruise as per the medical evidence. Therefore, there is nothing on record to establish that the accused Tirro was sharing the common intention with Jugadhar to cause death of Sukhdeo. Of course, he assaulted on the shoulder with the club, as a result of which he sustained simple injury of bruise. Therefore, the accused Tirro, at the most, has committed the offence punishable u/s 323 I.P.C. and he has been wrongly held guilty without any basis or without any legal evidence on record for the commission of offence u/s 302 read with section 34 of I.P.C.

**(10)** In the result, the conviction of accused appellant Tirro u/s 302/34 cannot be sustained. The appeal is partly allowed and the conviction imposed upon him u/s 302 read with section 34 I.P.C. are set aside. Instead thereof, he is convicted u/s 323 I.P.C. and sentenced to undergo R.I. for one year. He has also been convicted u/s 323 for attacking Sukman and for that he has been sentenced to undergo R.I. for 3 months and to pay a fine of Rs.200/-, and in default to further undergo R.I. for 3 months. As per the judgment, the accused Tirro is in detention since 10.12.2000, thereby he is in detention for about 6 years & 11 months and thus he has already served the sentence imposed upon him. Therefore, it is directed that the accused Tirro @ Tirna be set at liberty forthwith, if not required in any other case.

Sd/-
L.C.BHADOO
Judge

Sd/-
Sunil Kumar Sinha
Judge

Rao